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The Eagle Group

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February 16, 1994

General Counsel - William Kennard, Esq.
Federal Communications Commission
1919 M Street
N.W., Washington, D.C.

Written Ex Parte Presentation
in PP Docket No. 93-253

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FEB 16 1994

Dear Mr. Kennard:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Please allow us to introduce ourselves, we are Peggy Winston of Cleveland, Ohio and Dennis Henry of Atlanta, Georgia. We are affiliated with the wireless telecommunications technology industry. Our companies, through our combined efforts, have sought to inform and educate African Americans and other minorities about the Federal Communications (FCC) licensing process.

As you may know, by and large, **African Americans** have not been targeted for investments in the FCC's licensing program. For example, very few African Americans participated in the FCC lotteries for cellular phones, wireless cable, pagers, and most recently the top nine MSAs for IVDS. It has been explained that this occurred largely due to the lack of interest of application mills to market their products in the **African American** communities.

Nonetheless, in 1993 we have had tremendous success in educating **African Americans** and other minorities about investment in programs designed to encourage participation by **African Americans** and minorities in the FCC's licensing of Interactive Video & Data Services (IVDS). We have literally reached hundreds of minorities from all economic levels who are presently in our partnerships. There are more who intend to become involved if the lottery process is left open.

As we understand it, the Omnibus Reconciliation Budget Act dated August 10, 1993 states that Congress directed the FCC to grant licenses for various telecommunications technologies through a *competitive bidding* process so long as the technologies are "subscriber driven". IVDS is one of the technologies named in the Budget Act. However, Congress also directed the FCC to begin issuing licenses for new technologies, that benefited the public, in a timely fashion. Should IVDS licenses be awarded through the *competitive bidding* process, we are told it could be at least two

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years before the licenses are awarded. That is contrary to the Congressional directive for rapid deployment of these technologies.

Therefore, on behalf of our investors, we must express concern for the outcome of the granting of IVDS licenses through a *competitive bidding* process.

We feel that:

1) Should *competitive bidding* occur, **African Americans** (minorities groups) will be disadvantaged economically. It has already been acknowledged that many of the larger communications companies have already formed relationships with minority-owned businesses in an effort to take advantage of any preferential treatment accorded to such minority businesses. True minority owned businesses will not receive full benefit of the preferences provided due to these kind of arrangements. That is not within the spirit of the Congressional directive.

2) With only 2 licenses per market being granted, minority-owned business will not be able to compete for the larger markets, but will be relegated to the smaller, less lucrative markets. Larger "*deep pocket*" companies will submit higher bids beyond the reach of the financial capabilities of minority owned businesses.

3) Congress is conducting a review of the numerous mega-mergers between top Cable Entertainment and Telephone companies. The fear is that they will collectively dominate the means of delivering the programming to households and carrying the customers' response back from the household through telephone or fiber-optic lines. The wireless technology provided by IVDS is also a means for carrying the signal. This technology provides real competition for the large companies who already dominate the communications industry. If IVDS licenses are awarded through a *competitive bidding* process, the large communications companies will surely buy all of the decent licenses either themselves or through minority companies that they control. Please realize that these companies have already designed ways to take advantage of every preference provided in order to obtain the best remaining IVDS markets.

We understand that in the Notice of Proposed Rule Making released October 12, 1993 that Congress directed the FCC to consider providing *preferential treatment for minorities, women, and small businesses*. We feel that even with preferences provided for minorities, a *competitive bidding* process will not promote economic opportunity, competition, nor will it ensure that the licenses will be awarded to a wide variety of applicants including small businesses, minority groups, and women.

On the other hand, the process of granting licenses through a lottery provides a more viable and potentially lucrative opportunity for minorities. We feel that:

1) Our partnerships will have the same chance as every other applicant to win any market.

2) Minorities would have as good a representation as anyone else (large communication companies included).

3) The lottery would provide **African Americans** with a first time experience in a non-discriminating licensing process.

4) Any preferential; treatment for minorities would be appreciated in a *lottery* process, but are not of necessity because a lottery puts us (**African Americans**) on equal footing with the rest of the investors across the country.

Moreover, we propose the **Interactive Video & Data Services (IVDS)** licenses be **grandfathered** under the rules of the Report & Order dated February 12, 1992 (docket 91-2). When the FCC announced in June, 1992 to accept IVDS applications for the largest MSAs, hundreds of investors participated as evidenced by the large numbers filed for the first nine MSAs (4200). The number of potential investors increased immeasurably after September, 1992 because all were anticipating filing windows. No person anticipated the auction because all were waiting for the suit against the FCC regarding the \$1400 filing fee to be resolved. It is throughout this time that we, **African Americans** pushed for awareness by others and recommended their investment in applications for the IVDS lotteries. In 1988, Congress did something similar to what we propose. When a change was made in the treatment of tax laws for life insurance applications it **grandfathered** all applications that were accepted before the effective date of the change. We seek this same kind of treatment for the IVDS licensing program and for our investors in fairness to each of them.

In conclusion, further evaluation of FCC documents provide statements, which in our opinion, support our position that IVDS licenses should be awarded by lottery.

The Report & Order (docket 91-2) dated January 12, 1992 and released February 13, 1993 states in footnote 81 the following: "We note that Congress has given us exclusive jurisdiction over the regulation of non-common carrier radio services." The FCC decided that IVDS would be regulated as a private carrier. Further in item 65 the decision made by the FCC was stated as follows: "We have analyzed carefully the comments on this issue. Selecting among mutually exclusive applicants in each service area using a lottery appears to be the best method available at this time to provide for early introduction of IVDS services and to minimize licensing burdens on both the Commission and the public."

It was in this spirit that we became excited about IVDS and began to educate other **African Americans** about the potential of obtaining a license through the lottery process. We based our efforts on existing rules and regulations that were in place. Furthermore, why should approximately 20% of the population go under a *lottery* process for IVDS licenses and the remainder under a *competitive bidding* process? We are

referring, of course to the top 9 MSAs in the United States. As you may know, those markets were literally worth millions.

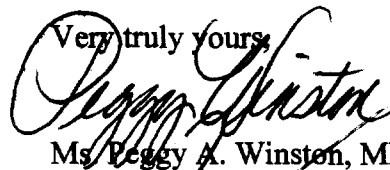
If one of the purposes of awarding licenses for various technologies through *competitive bidding* is to raise money to help reduce the federal deficit, then it should logically follow that the largest and potentially most lucrative markets should be a part of that process. Why should this burden be passed on to those participating in the licensing of smaller less valuable markets?

Additionally, by and large, **African Americans** have intentionally been left out of the lottery licensing process in the past. The FCC's licensing process was one of (White) Americans' best kept secrets in the eighties. We have, since that time, become educated and involved so why would the FCC consider depriving us of the opportunity to play by the same *lottery* rules as (White) Americans have enjoyed for over a decade?

We are asking the FCC to allow us to participate in at least the lottery for IVDS. We ask that the FCC stays with the existing *lottery* rules as restated in the FCC *fact sheet* issued dated October, 1993. It states, "*The Commission will issue two IVDS licenses per services area. Service areas will coincide with the 734 cellular service areas....When there are more than two applications per service area, selection of licenses will be by lottery (random Selection).*"

We ask that you consider in all sincerity our concerns and afford us the opportunity that we have long missed- that is an opportunity to compete fairly with the rest of America.

Very truly yours,



Ms. Peggy A. Winston, MBA

Mr. Dennis Henry

cc: FCC Chairman Hundt
Commissioner Quello
Commissioner Barrett
Commissioner Duggan
Mr. Byron Marchant
Mr. Rudy Barker
Mr. Brian Fontes
Ms. Linda Oliver